



STATE OF VERMONT
AGENCY OF HUMAN SERVICES

MEMORANDUM

To: House Committees on Commerce and Economic Development and on Human Services; Senate Committees on Economic Development, Housing and General Affairs and on Health and Welfare

From: Hal Cohen, Secretary, Agency of Human Services

Cc: Monica Hutt, Commissioner, Department of Disabilities, Aging and Independent Living
Steven M. Costantino, Commissioner, Department of Vermont Health Access
Ashley Berliner, Director of Health Care Policy and Planning, Agency of Human Services

Date: January 15, 2016

Re: Medicaid for Working People with Disabilities Rulemaking Implementation

This memorandum outlines the progress that the Agency of Human Services (AHS) has made in order to enhance eligibility and work incentives in the Medicaid for Working People with Disabilities (MWPD) program. It concludes that existing statutory language governing the MWPD program could prevent Vermont from receiving approval to make these changes from the Centers for Medicare and Medicaid Services (CMS). AHS intends to explore this issue further with the committees of jurisdiction.

Act 51 of 2015 asks that AHS explore the possibility of enhancing eligibility and work incentives for the MWPD program. Specifically, Section C.9 of Act 51 requires that AHS seek approval from CMS on or before October 1, 2015 for the following eligibility rule changes:

- 1) Increase the resource limits for eligibility for MWPD to \$10,000 per individual and \$15,000 per couple.
- 2) Disregard the income of a spouse who is a MWPD beneficiary when calculating the eligibility of the other spouse to receive traditional Medicaid benefits.
- 3) Disregard the income of the MWPD applicant's or beneficiary's spouse in determining the applicant's or beneficiary's eligibility for MWPD after the determination has been made that the MWPD applicant's or beneficiary's net family income is below 250 percent of the federal poverty level for a family of the applicable size.
- 4) Disregard Social Security retirement income for purposes of calculating eligibility for the MWPD program for beneficiaries who have reached the Social Security retirement age and whose Social Security Disability Insurance benefits (SSDI) have automatically converted to Social Security retirement benefits.

In order for AHS to receive approval from CMS to make the above-mentioned eligibility changes, AHS must submit a State Plan Amendment (SPA) to change the MWPD rules as they appear in the Vermont Medicaid State Plan. This SPA must then be approved by CMS through a formal administrative review process. SPA approval from CMS is a crucial step in the expansion of eligibility criteria because Federal Financial Participation is contingent upon SPA approval.

To comply with the legislative mandate to seek CMS approval of these changes by October 1, 2015, AHS took the following actions:

- On September 18, 2015, the AHS Director of Healthcare Policy and Planning sent a letter to CMS requesting technical assistance in order to determine how to realize the proposed changes within federal State Plan requirements.
- On October 1, 2015, State staff convened a conference call with CMS representatives to discuss the viability of the four eligibility criteria expansions.
- On October 26, 2015, State staff convened another meeting with CMS to discuss outstanding questions regarding these potential changes.

AHS determined that additional assistance from CMS was needed in order to assess the feasibility of submitting a SPA for these changes that CMS would approve. Specifically, there are federal laws regarding comparability (Section 1902(a)(17) of the Social Security Act) that may not permit Vermont to fulfill the second eligibility expansion listed above. This comparability provision may not allow for a disregard that narrowly applies to the spouse of a MWPD beneficiary. To explore this further, a request was sent on November 11, 2015 to Vermont Medicaid's contact at the CMS Regional Office asking for examples of how other states have successfully used Medicaid SPAs to make eligibility changes that are similar to what Vermont is trying to achieve for the second eligibility expansion.

While CMS has been exploring more concrete guidance as to how Vermont may achieve its MWPD eligibility objectives, AHS staff has been researching implementation requirements should Vermont ultimately receive approval from CMS. Implementation requirements include updating manuals and forms, training staff, and promulgating rules through the Vermont Administrative Procedures Act.

It is anticipated that AHS could submit a SPA for approval of these eligibility changes to CMS by March 2016, but an issue related to existing State statute could delay the submission of this SPA past March. Current statutory language at 33 V.S.A. § 1902 specifies MWPD income and resource limits. This language contradicts what AHS has been asked to implement in Act 51. AHS and Department of Vermont Health Access will engage in discussions with the committees of jurisdiction in order to resolve this issue.

Upon receiving CMS approval of a SPA, AHS will move forward with the implementation of this eligibility expansion as outlined in Act 51.

Additionally, Act 51 of 2015 asks AHS to “engage the assistance of benefits counselors at public and nonprofit organizations to increase public awareness of the Medicaid for Working People with Disabilities program and of other work incentives for individuals with disabilities.”

AHS utilizes benefits counselors in the state to increase public awareness of the MWPD program and other work incentives for individuals with disabilities. A group of benefits counselors operates within the Department of Disabilities, Aging, and Independent Living's Division of Vocational Rehabilitation. These six benefits counselors work directly with individuals with disabilities and in collaboration with agencies and organizations serving individuals with disabilities throughout the state. These benefits counselors also attend statewide conferences and events to promote employment and work incentives for individuals with disabilities.